

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Daniel Tomassi,

Plaintiff,

v.

Medical Recovery Systems, Inc.,

Defendant.

Case No. 14-10929

Honorable Nancy G. Edmunds

**OPINION AND ORDER ACCEPTING IN PART AND REJECTING IN PART  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [10]**

This matter comes before the Court on the Magistrate Judge's October 14, 2014 Report and Recommendation. Being fully advised in the premises and having reviewed the record and the pleadings, the Court hereby REJECTS IN PART and ACCEPTS IN PART the Magistrate Judge's Report and Recommendation.<sup>1</sup>

The Magistrate Judge recommended that Defendant's motion to dismiss pursuant to Federal Rule of Procedure 12(b)(6) be granted, but that the Court should provide Plaintiff an opportunity to amend the complaint as exemplified in *Wallack v. Mercantile Adjustments Bureau, Inc.*, No. 14-10387, 2014 WL 1515852, at \*3 (E.D. Mich. Apr. 18, 2014) (Rosen, C.J.). In *Wallack*, however, the court noted that just as it was about to issue its opinion dismissing the case, an attorney entered an appearance on the plaintiff's behalf. *Id.* at \*3, n.2. The court noted that this was "an important factor" in its decision to allow the plaintiff to amend his complaint. *Id.*

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<sup>1</sup> No timely objections were filed.

In this case, no attorney for Plaintiff has filed an appearance. Indeed, Plaintiff failed to respond to Defendant's motion to dismiss and also failed to file any objections to the Magistrate Judge's Report and Recommendation. Accordingly, in contrast to *Wallack*, this Court declines to provide Plaintiff with an unrequested opportunity to amend his complaint.

Defendant's motion to dismiss is GRANTED.

SO ORDERED.

S/Nancy G. Edmunds

Nancy G. Edmunds

United States District Judge

Dated: November 18, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 18, 2014, by electronic and/or ordinary mail.

S/Carol J. Bethel

Case Manager